

2001 M Street NW, 10th Floor
Washington, DC 20036



WWW.WILKINSONSTEKLOFF.COM

A LIMITED LIABILITY PARTNERSHIP

December 16, 2024

VIA ECF FILING

Honorable John G. Koeltl
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

*Application to seal granted.
so ordered.
per G/Koeltl
12/17/24 U.S.D.S.*

Re: *United States of America v. Visa Inc.*; Case No. 1:24-cv-07214 (JGK-SLC)

Dear Judge Koeltl:

We represent Visa Inc. in the above-referenced action. Pursuant to Rule VI.A.2 of Your Honor's Individual Practices, we respectfully request the Court's permission to file under seal five exhibits to the Declaration of Beth A. Wilkinson in Support of Defendant's Motion to Dismiss the Complaint and related information in Visa's Motion to Dismiss, both of which Visa will file today. The Government does not oppose this request. As described below, the exhibits—five non-public business contracts between Visa and third parties—contain confidential commercial information that is the proper subject of a sealing request.

Courts may seal documents filed with dispositive motions to protect "the privacy interests of those resisting disclosure." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (citation omitted); *see also* Fed. R. Civ. P. 26(c)(1)(g). One reason to seal "judicial records" is to protect "sources of business information that might harm a litigant's competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). Courts in this district have recognized that "disclosure of . . . confidential business contracts" can "result in competitive harm"—for example, by "disadvantag[ing] [the defendant] in future negotiations with third parties with respect to similar agreements." *Regeneron Pharms., Inc. v. Novartis Pharma AG*, No. 1:20-cv-05502, 2021 WL 243943, at *2 (S.D.N.Y. Jan. 25, 2021); *see also, e.g., SEC v. Ripple Labs, Inc.*, No. 20-cv-10832, 2023 WL 3477552, at *6 (S.D.N.Y. May 16, 2023) (sealing "certain contracts in their entirety" to protect "[the defendant's] business relationships and interests, and the privacy interests of non-parties").

The exhibits Visa requests to file under seal are non-public contracts between Visa and three non-party companies. Visa has "ongoing contractual relationship[s]" with each company. *Id.* Disclosing the agreements would expose not just Visa's and its counterparties' "highly confidential . . . pricing information," *Skyline Steel, LLC v. PilePro, LLC*, 101 F. Supp. 3d 394, 412–413 (S.D.N.Y. 2015), but also their agreements on technical support, use of intellectual property, and termination rights—"likely result[ing] in competitive harm." *Regeneron*, 2021 WL 243943, at *2.

Moreover, there is little “public interest in access” to the five exhibits. *United States v. Amodeo*, 71 F.3d 1044, 1049 (2d Cir. 1995). Visa’s motion to dismiss rests on the interpretation of specific provisions in the contracts, which the Government alleges are agreements not to compete. Visa believes that the vast majority of the language in the contracts will likely be “irrelevant to the Court’s decision” at this stage, even if it “could be very useful to a competitor.” *Alto v. Sun Pharm. Indus., Inc.*, No. 1:19-cv-09758, 2021 WL 4480952, at *1 (S.D.N.Y. Sept. 30, 2021). “Accordingly, the presumption in favor of public access is low.” *Graczyk v. Verizon Commc’ns*, No. 18-cv-6465, 2020 WL 1435031, at *9 (S.D.N.Y. Mar. 24, 2020). Disclosure of the contracts would therefore disproportionately harm Visa and non-parties relative to any public benefit.

For the foregoing reasons, Visa respectfully requests that the Court allow Visa to file under seal the five exhibits to the Declaration of Beth A. Wilkinson in Support of Defendant’s Motion to Dismiss the Complaint. We appreciate the Court’s consideration and would be happy to provide additional briefing to the Court if necessary.

Respectfully submitted,

/s/ Beth A. Wilkinson

Beth Wilkinson (SBN NY 2181592)
Brian Stekloff (admitted *pro hac vice*)
Kieran Gostin (SBN NY 4847653)
Roxana Guidero (admitted *pro hac vice*)
WILKINSON STEKLOFF LLP
2001 M Street NW, 10th Floor
Washington, DC 20036
Telephone: (202) 847-4000
Facsimile: (202) 847-4005
bstekloff@wilkinsonstekloff.com
bwilkinson@wilkinsonstekloff.com
kgostin@wilkinsonstekloff.com
rguidero@wilkinsonstekloff.com

Anne P. Davis (admitted *pro hac vice*)
Jonathan Ian Gleklen (admitted *pro hac vice*)
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue NW
Washington, D.C. 20001
Telephone: (202) 942-6197
Facsimile: (202) 942-5999
anne.davis@arnoldporter.com
jonathan.gleklen@arnoldporter.com

Counsel for Defendant Visa Inc.

CC: All Counsel of Record (via ECF)